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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

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Implementation of the Local Competition §
Provisions in the Telecommunications Act §
of 1996

CC Docket No. 96-98

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

**COMMENTS OF THE TEXAS TELEPHONE ASSOCIATION
IN THE NOTICE OF PROPOSED RULEMAKING**

The Texas Telephone Association ("TTA") offers the following comments with regard to the Notice of Proposed Rulemaking ("NPRM").

TTA is an organization representing 58 local exchange carriers ("LECs") that hold Certificates of Convenience and Necessity to provide local exchange service in the State of Texas. Our member companies serve over ten million access lines in Texas. Most of our member companies serve predominantly rural areas of Texas while others serve both urban and rural areas. On behalf of our membership, we wish to thank the Federal Communications Commission ("FCC") for the opportunity to comment on the crucial issues involved in the proposed rulemaking.

National Rules Should Provide A Framework for States

The Texas Telephone Association advocates that the Federal Communication Commission (FCC) establish national rules which provide a framework within which states would implement, through their own laws or regulatory rules, the competitive and regulatory goals and statutory provisions as set forth by Congress in the 1996 Act. These national rules should be crafted in a manner that establish guidelines that will ensure that states implement competitive and deregulatory policies that are consistent with and complementary of the 1996 Act, yet, they must afford states the flexibility to address their own unique and/or distinctive economic, geographic and demographic policy concerns. By no means, however, should these national rules pre-empt a state's authority to act and/or regulate in a manner consistent with the provisions of the federal act.

This 'framework' concept appears consistent with the reference made in the "Joint Explanatory Statement" cited in this NPRM which states that Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the United States

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telecommunications industry. As Senator Pressler observed in his statement of June 7, 1995, "...We need to devise a new national policy framework - a new regulatory paradigm for telecommunications"

While serving to form the framework for a national telecommunications policy, by no means was it the intent of Congress to override the important and legitimate interests of individual states to foster their own respective competitive and deregulatory policies that serve the public interest of a specific state so long as that policy is consonant with the federal legislation. It is totally consistent within the framework of the 1996 Act for individual states to be able to address unique or distinct policy concerns that give rise to the need for a flexible and adaptable national policy. Permitting variability among the individual state's policies would work to achieve national goals and even strengthen the national policy. It would do so by creating and fostering an environment that could accommodate innovation in implementing different regulatory approaches that would be responsive to each state's unique circumstances.

The congressional directive to the FCC to promulgate rules to implement Section 251 provides substantial latitude to afford state commissions to craft policies which reflect the concerns of the respective states. Subsection (d)(3) of this same section makes it clear that the FCC's directive to forge new regulations to implement the 1996 Act "shall not preclude the enforcement of any regulation, order, or policy of a State commission" that establishes access and interconnection obligations of local exchange carriers ("LECs"), is consistent with the requirements of Section 251, and "does not substantially prevent implementation of the requirements of Section 251" and its purposes. The clear language of subsection (f) of Section 251 addresses the role of State commissions in granting exemptions to certain rural telephone companies from the additional obligations imposed on incumbent local exchange carriers. It underscores the crucial role of State commissions in the pursuit of a viable, responsive and just telecommunications policy that fits the competitive environment of the specific jurisdiction.

The imposition of FCC mandated national rules would work to create disruptions in competitive environments already in place in those states that have fostered competition in the telecommunications industry. In Texas, for example, there is a twenty-five year history by way of statutory enactments and regulatory policies favoring development of competition in the long distance market, the specialized services market, the pay telephone industry, and the cellular market. As of the day of these comments, the Texas PUC is taking steps to implement new competitive and deregulatory policies as directed under the Public Utility Regulatory Act of 1995 ("PURA 95"). It is in the midst of moving towards implementing the general policy statement found in Section 3.051 of PURA 95 which provides that "...the public interest requires that new rules, policies, and principles be formulated and applied to protect the public interest and to *provide equal opportunity to all telecommunications utilities* in a competitive marketplace..." [emphasis added]. Under PURA 95, the Texas PUC has implemented a certification process allowing new entrants into the local exchange market. Since PURA 95's effective date, September 1995, and as of the date of this filing, there have been more than 25 certificates granted with another 15

pending. The Texas PUC has also implemented an Interconnection rule that is consistent with the federal provisions in Section 251. During consideration by the Texas PUC, this rule received broad support from competitive access providers, interexchange carriers, cable providers and consumer groups alike.

It would not serve the public interest for the FCC to impose a uniform national rule that would pre-empt the Texas PUC and halt or impede its aggressive action to foster local competition. The framework that could be established by a national rule could serve as a guideline for states implementing competitive policies while providing a benchmark for states yet to enact regulatory policies favoring competition.

Structure of Federal Law Recognizes State Role

The structure of the 1996 Act specifically recognizes and addresses the role of state jurisdictions and regulatory bodies as policy-making bodies and effectuators of telecommunications policy. As discussed above, Section 251 confers upon State commissions a major role in execution and oversight of rules that are intended to foster the development of competitive markets. Section 252 confers on State commissions the responsibilities of mediator and arbitrator of disputes among competitors with the authority of final approval of agreements. Section 253(a) limits a state or local political subdivision's authority to prohibit any entity from providing any interstate or intrastate telecommunications service. In contrast, Section 253(b) recognizes a state's authority to impose requirements necessary to preserve and advance universal service, protect the public's safety and welfare, ensure quality of telecommunications services and safeguard the rights of consumers. As a safeguard measure under Section 253(d), the FCC may preempt a state's authority if such state acts to violate the provisions of subsections (a) and (b).

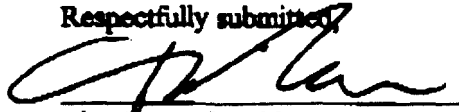
This legislative system of checks and balances exemplifies the key role envisioned by Congress for state authority in defining and effecting telecommunications policy in passage of the Act of 1996. Congress recognized the value of a state's authority to engage as regulator and policy-maker via statute or by action of a regulatory body. Section 253 gives clear statutory direction that the FCC should set national policy by reviewing the policies and regulatory actions of states within the confines of the statutory structure of the Act of 1996.

Any position that favors a FCC national policy that overrides a state's telecommunications policy and actions in promoting competition and deregulation in the industry in favor of a homogenous treatment of all competitive markets in this country, clearly fails to recognize, as Congress recognized, the necessity and value of state participation in the process of moving the nation towards a fully competitive telecommunications industry. The philosophy of "one size fits all" will not work in an industry where different states and regulators have taken varied approaches, different time lines with indisputably different considerations in dealing with an industry driven by technological change.

Conclusion

The Texas Telephone Association supports the promulgation of FCC national guidelines that would serve as a framework within which the states, by statute or regulation, may implement the competitive and regulatory goals and statutory provisions set forth in the Act of 1996. This framework is essential for the purpose of guiding states to establish goals and provisions consistent with, and complementary of, the 1996 Act. By way of these guidelines, states would be able to work towards the goals and provisions of the 1996 Act and at the same time be allowed to address their own unique and/or distinctive policy concerns. The provisions of the 1996 Act clearly support a "framework" or "guidelines" approach as the true course set by Congress in addressing the need for "a pro-competitive, deregulatory national policy framework."

Respectfully submitted,



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